

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE J.B.KOSHY

&

THE HONOURABLE MR. JUSTICE K.P.BALACHANDRAN

FRIDAY, THE 13TH JULY 2007 / 22ND ASHADHA 1929

MFA.No. 440 of 2001

OPMV.400/1997 of MOTOR ACCIDENT CLAIMS TRIBUNAL, TRIVANDRUM

.....

APPELLANT/3RD RESPONDENT:

**THE ORIENTAL INSURANCE CO. LTD.
THIRUVANANTHAPURAM REP. BY ITS
DEPUTY MANAGER, REGIONAL OFFICE,
ERNAKULAM NORTH, KOCHI - 18.**

BY ADV. SRI.GEORGE CHERIAN (THIRUVALLA)

RESPONDENTS/CLAIMANTS:

- 1. UDAYAKUMARI, D/O MADHAVAN NAIR,
CHITHRALAYAM, CHERIYAKONNI,
THIRUVANANTHAPURAM.**
- 2. GEETHA KUMARI, DO. DO.**
- 3. GOPALAKRISHNAN NAIR, S/O DO. DO. DO.**
- 4. SUDHEERKUMAR, DO. DO.**
- 5. HINDUSTAN LATEX EMPLOYEES WELFARE
SOCIETY REP. BY ITS SECRETARY, HINDUSTAN
LATEX LTD., PERRORKADA, TRIVANDRUM.**
- 6. RADHAKRISHNAN THAMPI, S/O VELAYUDHAN
PILLAI, VAILAKOM VEEDU, NEAR PARASSALA
GIRLS HIGH SCHOOL, PARASSALA VILLAGE,
THIRUVANANTHAPURAM DISTRICT.**
- 7. CHITHRAKUMARI, ABISHEK NAGAR,
NILAYMORE, ROOM NO.2/3,
NALLASUPRA EAST, MUMBAI.**

**R2 & R3 BY ADV. SRI.T.M.CHANDRAN
SRI.V.AJAKUMAR**

**THIS MISC. FIRST APPEAL HAVING BEEN FINALLY HEARD
ON 13/07/2007, THE COURT ON THE SAME DAY DELIVERED
THE FOLLOWING:**

ORDER ON C.M.P.NO.4623/2001 IN MFA 440/2001

DISMISSED

13.7.2007

SD/-J.B.KOSHY, JUDGE

SD/-K.P.BALACHANDRAN, JUDGE

/TRUE COPY/

J.B.Koshy & K.P.Balachandran, JJ.

M.F.A.No. 440 of 2001

JUDGMENT

Koshy, J.

A qualified Plumber, aged 24, while riding his bicycle, met with an accident due to the negligent driving of the vehicle insured by the appellant Insurance Company. He sustained serious injuries in the accident and later he succumbed to the injuries. Exhibit A8 certificate shows that the deceased was an ITI Diploma holder. His two sisters and two brothers filed an application for compensation of Rupees six lakhs. The Tribunal has awarded Rs.2,81,636/-. Insurance Company filed this appeal challenging the quantum of compensation.

2. It is the case of the Insurance Company that his brothers and sisters were elder to him and therefore, there is no chance of depending on the deceased and the award amount is excessive. However, the Tribunal has taken 17 as the multiplier, considering the age. Rs.2,000/- was

taken as the monthly income and after deducting one third, the Tribunal calculated the compensation at Rs.2,72,136/-. The claimants filed an appeal earlier with a delay condonation petition for condoning the delay of fourteen days in filing the appeal. The above matter was considered by another Division Bench of this Court. The above condonation petition was dismissed with the following observations:

"Appeal is preferred by the sisters and brothers as legal heirs of deceased Suresh Kumar. He met with an accident on 20.1.1997. Counsel for the appellant mainly contended, for pain and suffering no amount has been awarded. We notice even though an amount of Rs.6 lakhs was claimed, the Tribunal awarded a total amount of Rs.2,81,636/-. Even though no amount has been awarded for pain and suffering on the whole, a just and reasonable award has been passed by the tribunal. We are informed that the deceased was a plumber. According to the appellants, he was getting a monthly

income of Rs.4000/-. But, no evidence was adduced to establish the same. Tribunal fixed Rs.2000/- as monthly income for fixing the compensation. On the whole, we find the compensation fixed is just and reasonable, which cannot be interfered with in this appeal. Under such circumstances, there is no reason to condone the delay. Delay petition is accordingly dismissed."

3. It is true that in the case of death of a bachelor, instead of considering the age of the deceased, the age of the claimants also has to be considered, as the question to be decided is what is the actual loss of dependency due to the death of the victim. Therefore, a lower multiplier ought to have been taken by the Tribunal. The contention of the claimants is that the first claimant sister, though aged 34 at the time of the death of the victim, she was deserted by her husband and she was living in the family house depending mainly on the income of the deceased. The second sister also was divorced and she was also living in the family

house depending on the income of the deceased. Even then multiplier taken as 17 by the Tribunal is excessive. But, we are of the opinion that the monthly income taken for an ITI Diploma holder as Rs.2,000/- is on the lower side. If Rs.3,000/- was the monthly income, dependency has to be calculated as Rs.2,000/-, after deducting one third and even if the multiplier is reduced, same amount of compensation will be payable. Considering the total compensation awarded for a 24 year old qualified Plumber, we are of the opinion that there is no reason to reduce the award amount. The Tribunal awarded 12% interest. We reduce the same to 9% per annum, even though at the time of passing the award that was the usual rate of interest.

With the above modification, the appeal is disposed of.

(J.B.Koshy, Judge)

13th July, 2007

(K.P.Balachandran, Judge)

tkv

J.B.Koshy & K.P.Balachandran, JJ.

M.F.A.No.440 of 2001

JUDGMENT

13th July, 2007